

SIMON A. RIFE

IBLA 81-463

Decided August 3, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. W-72897.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Applications: Attorney-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (June 1980), is not completed in accordance with regulation 43 CFR 3112.2-1 or the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, are left unanswered.

2. Administrative Authority: Laches--Estoppel--Laches

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

APPEARANCES: Robert K. Silverman, Esq., Omaha, Nebraska, for appellant; Edwin A. Naylor, Esq., Denver, Colorado, for Eunice Heiby.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Simon A. Rife has appealed the February 26, 1981, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his

simultaneous oil and gas lease application drawn with first priority for parcel 6486 in the September 1980 drawing, for the reason that the application was not fully completed, citing 43 CFR 3112.2-1(a), which requires the application to be fully completed, signed, and filed pursuant to the regulations in 43 CFR Subpart 3112. Rife's application was not completed inasmuch as no box was checked in connection with items "d," "e," and "f" on the reverse side of the application.

Regulation 43 CFR 3112.2-1(a) provides:

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. The first applicant for a lease, as determined under the regulations in this subpart, who is qualified to hold a lease under the Act and the regulations in this title shall be entitled to submit an offer for the lease as described in § 3112.4-1 of this title.

The reverse of the application has seven statements to which applicant must certify. Items "d," "e," and "f" require a response to the specific question by means of a check in the appropriate box to indicate either "yes" or "no." Since none of the boxes was checked, it cannot be said that the Rife application was completed as required by the regulations.

In his notice of appeal, appellant states that the answers to questions "d," "e," and "f" were omitted by inadvertence and oversight, and that because his answers would have been in the negative for each question, he should have been given an opportunity to complete the application.

In a supplemental statement of reasons, appellant argues that BLM should be estopped from rejecting the application because of a delay of nearly 4 months after the priority drawing before he was notified that his application was defective; because BLM continued informally to advise appellant that he would receive a lease and encouraged him to negotiate the sale of such lease; and because, in reliance to his detriment, he had expended considerable time, money, and effort, all of which could have been avoided by prompt review of appellant's application.

A reply from the second-drawn applicant, Eunice Heiby, has been filed, supporting BLM's action. Respondent argues that the defects in appellant's application are neither trivial nor inconsequential, and that the long line of the Board's decisions requiring strict compliance with the regulations governing the simultaneous filing procedures necessitates rejection of the application. Respondent also argues that BLM is not estopped from rejecting the subject application.

[1] As stated above, 43 CFR 3112.2-1(a) requires the lease application to be completed. 43 CFR 3112.6-1(a) states that any application which is not filed in accordance with 43 CFR 3112.2 shall be rejected.

An application not completely filled out cannot be said to have been filed in accordance with 43 CFR 3112.2, and so it is properly rejected.

The cited regulation, 43 CFR 3112.2-1(a), is the revision of May 23, 1980, at 45 FR 35156. Prior to that revision, 43 CFR 3112.2-1 stated:

"Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, 'Simultaneous Oil and Gas Entry Card' signed and fully executed by the applicant or his duly authorized agent in his behalf." The revision changed the language, but the substantive requirement is still present. The application must be complete when first filed in order to be a valid application. This Board has consistently required strict compliance with the substantive requirements of the regulations governing the filing of applications in the simultaneous oil and gas leasing program. See, e.g., Rose B. Carrington, 46 IBLA 149 (1980); Margaret H. Wygocki, 45 IBLA 79 (1980); John L. Messinger, 45 IBLA 62 (1980). Further, the requirement of strict compliance continues to be enforced under the present regulations. Vincent M. D'Amico, 55 IBLA 116 (1981).

A first-drawn application to lease in the simultaneous filing program creates no vested right therein; the applicant gains merely a right of priority in consideration. Harry A. Zuckerman, 41 IBLA 372 (1979); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd per curiam, Ballard E. Spencer Trust v. Morton, 544 F.2d 1067 (10th Cir. 1976); Barbara A. Joeckel, 30 IBLA 376 (1977); Amy H. Hanthorn, 27 IBLA 369 (1976); C. Burglin, 21 IBLA 234 (1975). The Department is authorized to accept only the application of the first-qualified applicant, 30 U.S.C. § 226(c) (1976), one who has fully complied with the mandatory regulations. Sorenson v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978); Harry L. Zuckerman, supra; Manhattan Resources, Inc., 22 IBLA 24 (1975); Southern Union Production Co., 22 IBLA 379 (1975).

Not all persons may be qualified to be lessees, and for that reason all offerors must furnish evidence of their qualifications to hold Federal oil and gas leases. Harry L. Zuckerman, supra; University of the Trees, 40 IBLA 74 (1979). Completion of the application by indicating the proper answer to items "d," "e," and "f" is essential to determination of the qualifications of the applicant as of the date indicated on the application. Viewed in the light of the underlying rationale, the conclusion is inescapable that completing the answers to items "d," "e," and "f" is essential to completing the application and as such is a rational legal requisite directly affecting the contractual efficacy of the application. See Sorenson v. Andrus, supra; Harry L. Zuckerman, supra; Jack L. MacDowell, 34 IBLA 202 (1978); Thomas C. Moran, 32 IBLA 168 (1977); Frank DeJong, 27 IBLA 313 (1976); John Willard Dixon, 28 IBLA 275 (1976); Herbert W. Schollmeyer, 25 IBLA 393 (1976). It therefore must follow that "completed" quite simply and logically means that the applicant must, in order to render the application valid as an application for an oil and gas lease, supply all the information requested thereon. Appellant did not submit the requisite statements as to other parties in interest, agreements to assign the

lease if issued, or any interests held by appellant in other applications for the same parcel. For that reason alone, the application was subject to rejection. A first-drawn application in the simultaneous filing program which is defective because of noncompliance with a mandatory regulation, must be rejected and may not be "cured" by submission of further information. Ballard E. Spencer Trust, Inc., supra; Charles J. King, 40 IBLA 276 (1979). Giving an unqualified first-drawn entrant additional time to file infringes on the rights of the second-drawn qualified application. Ballard E. Spencer Trust v. Morton, supra at 1070. A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. An incomplete first-drawn application in the simultaneous filing procedure must be rejected because the applicant is not the first-qualified applicant. Viking Resources Corp., 48 IBLA 338 (1980); Norcross Partners, 31 IBLA 181 (1977).

It has been held that an application for a Federal oil lease is a hope or, perhaps, expectation rather than a vested property right. See Schraier v. Hickel, 419 F.2d 663, 666-67 (D.C. Cir. 1969). To hold otherwise, and to thereby recognize that the mere filing of an application creates a property right which is immune from modification, would seriously handicap the Secretary in the exercise of his proprietary duties. Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971).

[2] Appellant charges that the time lag between the date of the drawing, October 30, 1980, and the date of issuance of the rejection decision, February 26, 1981, almost 4 months, was "arbitrary and capricious footdragging." During the period following the publication of proposed rulemaking, September 28, 1979, and the final rulemaking published May 23, 1980, the Department received more than 430 comments relating to the simultaneous oil and gas lease system. Several comments recommended that the final rulemaking require issuance of a lease within 30 to 60 days of receipt of the application. The Department's reply was: "Unfortunately, proper management of the public lands and their resources sometimes requires a longer delay. Therefore this recommendation has not been adopted as part of the final rulemaking."

It has not been shown by appellant that the delay of notification of rejection in the present case was unduly aggravated, given the number of parcels involved in the drawing and the time of the year, embracing the Thanksgiving, Christmas, and New Year's Day holiday periods. There were 259 parcels in the drawing for which more than 345,600 applications were filed, and in the numerical sequence of those parcels, the subject parcel was number 237. Routine adjudication would consider the applications in the numerical order of the parcel numbers. The charge of arbitrary and capricious footdragging has not been supported. The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or by their laches, neglect of duty, failure to act, or by delays in the performance of their duties. Frederick H. Larson v. State of Utah, 50 IBLA 382 (1980).

Appellant seems to rely on Brandt v. Hickel, 427 F.2d 53 (9th Cir. 1970), as support for his proposition that the Government should be estopped in this case because of misleading assurances given to him by

a BLM employee. The employee submitted an affidavit denying that any such assurances were given. Further, Brandt is easily distinguished from the present case. In Brandt, a BLM land office rejected an oil and gas lease offer filed by Mary L. Brandt and Natalie Z. Shell because of unequal interests, but allowed 30 days for them to substitute a new lease offer without losing priority. Before a substitute offer was submitted to BLM, one Raymond J. Hansen filed his lease offer for the same lands as sought by Brandt and Shell, and protested issuance of a lease to Brandt and Shell. The BLM land office dismissed the protest of Hansen, an action affirmed by the Director, BLM, following Hansen's appeal. Further appeal by Hansen to the Secretary of the Interior brought a reversal of the Director's decision, with the conclusion that the substitute amended lease offer by Brandt and Shell was an attempt to create a new offer and the failure of Brandt and Shell to appeal the original land office decision lost them any rights to assert validity to the original lease offer. The Secretary also held that the land office had no authority to give the new Brandt-Shell offer priority over the offer of Hansen. Following judgment in favor of the Government by the United States District Court for the Eastern District of California, the United States Court of Appeals for the Ninth Circuit held that where offerors submitted a noncompetitive oil and gas lease offer to an office of the Bureau of Land Management, statements made by personnel in that office that "subject offer is hereby held for rejection" and "failure to submit a new offer form will result in the final rejection and closing of the case without further notice" were ambiguous as to whether the decision was final, and thereby denied the offerors effective right of appeal and deprived them of due process of law. Brandt v. Hickel, *supra*.

Inasmuch as the application of appellant in the case at bar was incomplete and therefore defective in form, there is no precedent to be drawn from the decision in Brandt. Furthermore, there is no ambiguity in the BLM decision on appeal; it clearly indicates that it is a final action subject only to appeal before this Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

